

Sheriff acts as a “conduit” for court action

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When a sheriff approaches the defendant (tenant) to attach his or her property or to eject the tenant from the dwelling, he does so under legal instruction. Remonstrating with him about not having received summons and therefore accusing him of acting unlawfully will not stop the legal process.

A sheriff acts under certain rules and regulations and has to perform his work as required by law, without demur, favour or delay. If the legal instruction by way of a court order empowers him to eject the tenant from the dwelling and to do all things necessary to carry out the ejection, then the sheriff is obliged to fulfil the “mandate”.

To stop a sheriff or to reverse the action of a magistrate’s court ejection, the aggrieved party has to go to court to interdict the sheriff and to have the judgment rescinded or cancelled. The sheriff cannot falter in carrying out a legal instruction. Let us take the case of a tenant who was served with summons wherein the landlord claims (cause of action) arrear rentals, cancellation of the lease and prays for the ejection of the tenant.

The tenant is not aware of the summons or ignores it based on the notion that if one does not sign for the receipt of a summons, there is no cause of action. The cause of action was set out in the summons or in the particulars of claim that is either in the main part of the summons or attached to it.

The sheriff provides a return of service that indicates how the summons was served. It will show for instance that the defendant refused to accept the summons or that it was placed on the defendant’s door.

The defendant has five working days in the case of a magistrate’s court summons to inform the court and the plaintiff (landlord) that he or she intends to defend the action. If no appearance to defend is recorded; served on the plaintiff and the court, the plaintiff may proceed against the tenant as a result of a default judgment. The sheriff will be instructed accordingly.

Should the tenant engage into negotiations with the landlord or the landlord’s attorney, it would be prudent to have a withdrawal of notice of action or a settlement agreement. It is advisable to consult an attorney when summons is served. Ignoring it or not acting in time can lead to serious consequences, to the point of being thrown out into the streets.

Presenting the sheriff with proof cannot stop the legal process under which the sheriff has to act. The defendant will have to approach the court and in this way start a legal process to prevent ejection or to get reinstated.

The sheriff is a “conduit” who will act for the tenant when instructed to do so through the courts. While the sheriff serves or executes documents, issued by a magistrate’s court or high court and is appointed by the Minister of Justice, the sheriff is independent and does not work for the courts.

A person can lodge a written complaint with the Board of Sheriffs in Cape Town (P.O. Box 5454, Cape Town, 8000) about the behaviour of a sheriff of the court.